

## **Department of Public Safety Standards and Training Memo**

**Date:** November 17, 2016

**To:** Police Policy Committee

**From:** Jennifer Howald  
Rules Coordinator

**Subject:** Proposed Rule Change for OARs 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0070 and 259-008-0080  
The Criminal Justice Denial/Revocation Workgroup Recommendations  
for the Denial and Revocation Standards

**Background:** In 2015, the Telecommunications, Corrections and Police Policy Committees approved the formation of a workgroup to review the current denial and revocation standards. The Criminal Justice Denial/Revocation Workgroup reviewed the Oregon Administrative Rules (OAR) and the procedures in place for the denial or revocation of a public safety professional's certifications. The Workgroup also reviewed the current statutory authorities of the Board on Public Safety Standards and Training (Board) and DPSST with respect to the certification of individuals employed in Oregon to perform the duties of police officers, corrections officers, parole and probation officers, regulatory specialists, telecommunicators and emergency medical dispatchers.

Over the course of their meetings, the Workgroup developed several recommendations that have been presented to the Policy Committees and the Board. The recommendations that have been reviewed to date include:

- A recommendation to add a citizen member to the Telecommunications, Corrections and Police Policy Committees. This recommendation requires a change in statute and has been drafted as a legislative concept that is scheduled to be reviewed during the 2017 Oregon Legislative Session.
- A recommendation that all public safety officers complete a minimum of one hour of ethics training annually as a part of the certification maintenance training requirements. After a three year implementation period the recommended training would become required training in order to maintain certifications. This recommendation was approved by the Board on October 27, 2016 and will be moving forward to the public comment phase of the rule making process. If no public comments are received, then the approved recommendation for annual ethics training will be filed jointly with upcoming recommendations for changes to maintenance standards.

- A requirement that the DPSST Form F4 (Personnel Action Report) must be signed by the Department Head or a currently certified public safety professional authorized by the department head. This recommendation was approved by the Board on October 27, 2016 and will be moving forward to the public comment phase of the rule making process. If no public comments are received, then the rule is expected to become permanent effective January 1, 2017.
- A requirement that all public safety professionals will be responsible for notifying DPSST if they are arrested. This is a change from the current requirement for a public safety professional to notify their employer of a conviction. This recommendation was reviewed by the Board on October 27, 2016. It was referred back to the Workgroup for additional consideration and has been addressed in the Workgroup's recommendations for the changes to OAR 259-008-0070.

**Criminal Justice Denial/Revocation Workgroup Recommendations for the Denial and Revocation Standards:**

The draft language for OAR 259-008-0070 incorporates the complete efforts of the Workgroup to review and recommend changes regarding the denial and revocation process. Highlights of the Workgroup's recommendations include:

- Removal of the definitions section from the rule language
- Removal of the Mandatory and Discretionary lists of crimes
- Changes to the definition of discharge for cause as mandatory grounds for denial or revocation
- Changes to the definition of discretionary grounds for denial or revocation
- Changes to the definitions of the elements of misconduct - Dishonesty, Disregard for the Rights of Others, Misuse of Authority, and Gross Misconduct
- Addition of Emergency Suspension of certifications in extreme circumstances
- Addition of Suspension of certifications as an alternative to revoking certifications
- Changes to the ineligibility periods that are determined for each denial, suspension, or revocation action
- Addition of the opportunity for the affected individual to make verbal statements to the Policy Committees
- Changes to the reconsideration of eligibility for certification after denial, suspension or revocation

The following summary outlines the implementation of the Workgroup's recommendations and changes that were made to the organization of the rule with the intention to improve the flow of the language and represent the linear process of denial, suspension or revocation for discretionary grounds.

**Section (1)** provides a purpose statement.

**Content Deletion:** The definitions for Denial, Discretionary Misconduct and Revocation included in the current rule were deleted from the draft rule language. Denial and Revocation are considered to be commonly used terms that do not require a definition and the definition for Discretionary Misconduct references the definition provided later in the rule.

**Section (2)** addresses the **mandatory grounds** for denial or revocation of certifications. ORS 181A.640 requires that the Department deny or revoke certifications based on discharge for cause and provides that the Board shall adopt rules to specify which crimes and violations resulting in a conviction require the denial or revocation of certifications.

The current rule language defines discharge for cause as an employer initiated termination of employment involving dishonesty, disregard for the rights of others, gross misconduct, incompetence or misuse of authority. Upon notification of a discharge for cause, the Department makes a determination regarding the conduct and whether or not it meets the definition of discharge for cause and then proceeds with the revocation if the conduct meets the definition. An individual found to have been discharged for cause is revoked for life. There is no ineligibility period that they can satisfy and later become reemployed or recertified in Oregon as a public safety professional. This creates a disparity in the treatment of a professional standards case for an individual who resigns during or in lieu of termination. By resigning, the individual's professional standards case becomes discretionary and if revoked, they may reapply for eligibility for certification after satisfying an ineligibility period.

In recognition of the disparity, the Workgroup approved an amended definition of discharge for cause. The amended definition lists specific employment related behavior that, when occurring under the color of office, would warrant mandatory revocation of certifications.

In review of the current rules in place for the mandatory denial or revocation of certifications based on a conviction, the Workgroup recommended eliminating the list of mandatory crimes from the rule. The Workgroup agreed that having an inclusive list is problematic because use of a list inadvertently creates exclusions. They recommended maintaining the mandatory grounds for:

- Convictions of a felony or crime punishable by imprisonment for more than one year;
- Convictions involving unlawful use, possession, or manufacture of a controlled substance (excluding less than one ounce of marijuana prior to certification); and
- Convictions involving domestic violence.

The Workgroup recommended the addition of:

- Convictions involving child abuse that is domestic in nature; and
- Convictions requiring registration as a sex offender, regardless of when the conviction occurred.

The Workgroup also considered the requirement that Standards and Certification must take action on any conduct that requires mandatory denial or revocation regardless of when the conduct occurred and recommended maintaining this standard as it is currently in rule.

**Section (3)** provides draft language for the Workgroup's recommendation to establish an avenue for **emergency suspension** in cases of serious danger to public health and safety. The Workgroup's discussions identified that these situations would be extremely rare and the Department of Justice identified that the standard of serious danger to public health and safety for emergency suspension would be a high threshold to meet.

**Section (4)** addresses the **discretionary grounds** for denial, suspension or revocation of certifications. In consideration of the permanency of denial and revocation decisions, the challenges of ineligibility periods, and the current process for reconsideration after an ineligibility period, the Workgroup recommended including the option for suspension of an individual's certifications. The draft rule language incorporates suspension of certifications for discretionary misconduct that rises to the level to warrant action on the individual's certifications.

**Subsection (4)(a)** provides an amended **definition of misconduct for discretionary grounds**. The Workgroup recommended removing the discretionary crimes lists and their categorizations of the crimes. This recommendation resulted in the need for a definition of what constitutes misconduct that would need to be reviewed by the Policy Committees and the Board as discretionary disqualifying misconduct. The draft rule language defines misconduct as:

- Conduct that resulted in a criminal disposition for any offense other than convictions constituting mandatory grounds (This language becomes the replacement for the crimes list.)
- Conduct that includes any of the elements of Dishonesty, Disregard for the Rights of Others, Misuse of Authority; and Gross Misconduct
- Conduct that violates the standards of conduct for academy training or fails to meet the minimum standards of employment, training or certification established by rules.
- Falsification of any information submitted to the Board or Department (Same as current rule)
- A police officer's failure to attend at least one session with a mental health professional...as required by ORS 181A.790 (Same as current rule)

The Workgroup discussed at length the need to consider more than just dispositions that resulted in convictions. By consensus, the Workgroup agreed that judgments resulting in dispositions other than convictions were relevant to making a determination of whether or not an individual violated moral fitness standards set by the Board.

The final recommendation incorporated the consideration the additional dispositions of violation, adjudication, a plea of guilty or no contest, or a finding of guilty except for insanity or its equivalent. Providing this language regarding offenses and dispositions in

this section allows for the use of the term “criminal disposition” throughout the rule, eliminating the need to repeat each of the dispositions and the jurisdiction for each offense defined by discretionary grounds for denial, suspension and revocation.

**Subsection (4)(b) provides the triggers that will initiate a professional standards case** based upon receipt of information that would lead an objectively reasonable person to conclude that a violation of Board established standards may have occurred. The triggers include:

- Notification of an arrest\*, a criminal citation to appear or its equivalent, a conviction, or other criminal disposition
- Notification of a non-voluntary separation of employment from a certifiable position, or
- Complaints.

\*In recognition that the Workgroup has reviewed and approved the addition of language that adds “a criminal citation to appear or its equivalent” to the draft of OAR 259-008-0070, DPSST staff will amend the language that was drafted to incorporate the Workgroup’s original recommendation to change notification of conviction to notifications of arrest. The notification of arrest draft rule language for OAR 259-008-0010, 259-008-0011, 259-008-0075 and 259-008-0080 will be amended throughout to read as follows:

(5) Notification of Arrest or Criminal Citation to Appear. A [law enforcement officer/telecommunicator/ emergency medical dispatcher/instructor] who is arrested, or receives a criminal citation to appear or its equivalent, for any offense punishable as a crime must notify the Department within five business days. Notification must be in writing and include the date of the arrest or citation, the location of the arrest or citation, the reason for the arrest or citation and the arresting or citing agency.

If each Policy Committee recommends the draft rule language for OAR 259-008-0070, as presented here, to the Board then DPSST staff will resubmit the changes for notification of arrest or criminal citation, as provided above, for OAR 259-008-0010, 259-008-0011, 259-008-0075 and 259-008-0080 to the Board at the January 26, 2017 meeting.

**Subsection (4)(c) establishes how complaints will be reviewed.** When a complaint is received regarding a currently employed individual, DPSST will work with the employing agency to determine if there is a reasonable basis to proceed with a professional standards case. The complaint will be forwarded to the employer for review.

The department will defer any further investigation, discipline or remedy to the employing agency. The employer will be required to respond to the Department that the complaint has been reviewed.

DPSST would take no further action on the complaint after receiving the employer's notification that the complaint has been reviewed and handled as dictated by the employing agency.

Should the complaint subsequently result in a non-voluntary separation of employment or a criminal disposition, DPSST may open a professional standards case on the public safety professional based on the resulting separation or disposition.

Complaints against an individual who is not currently employed, complaints where the employer is non-responsive to the Department and complaints made against public officials serving as public safety professionals, may be presented to a Policy Committee for a disposition on what action to take, up to an investigation conducted by Standards and Certification.

**Subsection (4)(d)** outlines guidelines for DPSST to **administratively close** a professional standards case. Administrative closure for these reasons will not require review by a Policy Committee. Standards and Certification will administratively close:

- Any case involving a criminal disposition that occurred prior to January 1, 2001.
- Any case based on a criminal disposition that was reviewed by Standards and Certification or the Board under the standards in place prior to **April 1, 2017**\* and determined to not meet the statutory and administrative rule requirements for denial, suspension or revocation under previous administrative rules.
- Any deferred adjudications in which the only charge is for ORS 813.010 (Driving Under the Influence of Intoxicants) upon confirmation of dismissal.

NOTE: A Policy Committee and the Board may still consider a criminal disposition that was administratively closed for any of the above reasons as an aggravating factor in a separate disciplinary investigation.

\*April 1, 2017 has been included as the projected implementation date of the recommended changes for OAR 259-008-0070. The date is subject to change based on the requirements and timelines associated with the review of the draft language by each criminal justice policy committee and the Board as well as the rulemaking process.

**Subsection (4)(e)** addresses the process of the **review of a professional standards case by Standards and Certification** to make a determination to present the case to a Policy Committee and the Board.

The Workgroup identified that the workload would be prohibitive if every instance of misconduct needed to be reviewed by a Policy Committee. However, to ensure transparency of an administrative closure process for misconduct that may constitute a violation of statutory and administrative rule requirements, the Workgroup requested that Standards and Certification establish a consent agenda of all the recommended administrative closures for review by each criminal justice discipline's Policy Committee.

The draft consent agenda prepared for the Workgroup has been included as Attachment A. This is a sample and may be formatted differently upon implementation of the rule changes.

Policy Committee members would have the opportunity to review the recommendations and determine if there were any concerns about the misconduct recommended for administrative closure or any disagreements with the recommendation to administratively close a professional standards case. Recommendations could be pulled from the consent agenda for additional information and discussion, up to and including a Policy Committee's request to review the professional standards case through the discretionary process at a later Policy Committee meeting.

The guidelines established for the recommendation to administratively close a professional standards case include:

- Conduct that does not meet the requirements for denial, suspension or revocation, or
- A criminal disposition where:
  - the disposition occurred 7 years or more prior to employment as a public safety professional
  - the disposition represents the only criminal disposition
  - the conduct did not include dishonesty or deceit
  - the individual is no longer on a form of court ordered supervision, and
  - the individual does not have any unpaid restitution, fines or fees resulting from the criminal disposition.

**Paragraph (4)(e)(E)** states that when a professional standards case is reviewed by a policy committee, the affected individual has **the opportunity to submit mitigation** for the Policy Committee and the Board to review.

The current process already allows for the individual to submit written statements or documentation. The Workgroup recommended the addition of the opportunity for an affected individual to make verbal, in person statements to the Policy Committee.

The guidelines established for this opportunity include making arrangements in advance and adhering to a maximum of 5 minutes of verbal statements. The verbal statements may be made by a representative of the affected individual. There will not be a question and answer period. The individual may choose to provide verbal statements, written statements or documentation, or both.

**Subsection (4)(f)(A)** addresses the process of the **review of a professional standards case by a Policy Committee and the Board** to make a determination on whether or not the misconduct rises to the level to warrant denial, suspension or revocation of certifications.

The first determination that a Policy Committee and the Board must make is whether or not the misconduct demonstrates an individual's lack of moral fitness by identifying if the conduct the individual engaged in includes any of the elements of Dishonesty, Disregard for the Rights of Others, Misuse of Authority, or Gross Misconduct. Review of the misconduct by the Policy Committee and the Board may identify one element, more than one element, or no elements.

The Workgroup held extensive discussions regarding the definitions of these elements. They recommended that the definitions be amended for clarity and specifically eliminate the redundancy of the definitions used for gross misconduct and misconduct in current administrative rule. The following chart provides a side by side comparison to the current rule definitions and the draft rule language.

Current Rule Definition	Draft Rule Definition
Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification	Dishonesty: Includes conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;
Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public	Disregard for the Rights of Others: Includes conduct that knowingly violates the constitutional or civil rights of others;
Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office	Misuse of Authority: Includes the use or attempt to use one's position to obtain a benefit, avoid a detriment, or harm another while acting under the color of office;
Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance	Gross Misconduct: Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency;
Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. By definition, all criminal convictions meet the definition of Misconduct within this category	Removed-Combined with Gross misconduct as "disregards the law"
Insubordination: Includes a refusal by a public safety professional to comply with a	Removed-Determined to be related more to job competency than to moral fitness

rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties	
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**Subsection (4)(f)(B)** outlines the **review and identification of aggravating and mitigating circumstances**. The Workgroup wanted to ensure that aggravating and mitigating circumstances were reviewed similarly from case to case. Based on a recommendation by the Workgroup, DPSST staff will include responses to the established list of aggravation and mitigations questions within each staff report when presenting a professional standards case to the Policy Committee and the Board. See Attachment B for a sample.

The Policy Committee will review these circumstances and also identify additional aggravating and mitigating circumstances, including the review of a public safety professional's written or verbal evidence submitted as supporting documentation for mitigation of the conduct under review.

**Subsection (4)(f)(C)** provides the recommended guidelines for the minimum and maximum ranges on the **lengths of ineligibility** based on the elements identified in the individual's conduct that were determined to warrant denial, suspension or revocation of certifications, after the consideration of the totality of the case.

This subsection also outlines the application of an ineligibility period. The current language for OAR 259-008-0070 (7)(e) states that the length of ineligibility for training or certification based on a conviction begins on the date of conviction. This provision has been modified in the draft rule language to state that the first day of the ineligibility period is the date that the judgment of the disposition was entered.

Because of the implication of making moral fitness determinations on past behaviors, Staff and DOJ recommend maintaining this standard.

Based on the intention of the language regarding ineligibility periods beginning on the date of judgement, DPSST staff added similar draft language for non-voluntary separations of employment in recognition that Staff and Policy Committee workloads may impact the timeliness of review.

NOTE: This means that some cases reviewed by the Policy Committee and determined to be ineligible may have satisfied the ineligibility period by the time the Final Order becomes final based on the lapse of time between the conviction, or the separation of employment, and the review of the professional standards case. Staff will prepare the Final Orders accordingly in these situations.

**Subsection (4)(g)** recognizes that any decision to deny, suspend or revoke certifications is administered through the contested case process. The only change within this subsection was the addition of the option for suspension.

**Subsections (4)(h)-(j)** describe the outcome of a certification once the determination has been made that the conduct reviewed includes any of the elements that indicate a violation of moral fitness and an ineligibility period has been determined. The Workgroup recommendation was to use the ineligibility period to determine whether a public safety professional's certifications are suspended or revoked.

If the professional standards case originated from an application for training or certification then the individual would be denied for the ineligibility period established by the Board and the Policy Committee. If the individual also held additional public safety professional certifications those certifications would be suspended or revoked as well.

An ineligibility period of 3-5 years would be treated as suspension of the individual's certifications. While the suspension period would always appear on the individual's DPSST training record, it could still be considered a temporary status. Upon return to a certifiable position, the certification would be considered lapsed and the individual would need to meet employment, training and certification requirements to reactivate their certifications.

An ineligibility period of more than 5 years would be treated as a revocation of the individual's certifications. The revocation of a certification would always appear on the individual's DPSST training record and would be considered a permanent status. Upon return to a certifiable position, the individual would need to meet employment, training and certification requirements and apply for new certifications.

Reference Attachment C for samples of how a suspension or a revocation may appear as viewed in a DPSST training record or a Snapshot view of the record.

**Subsection (4)(k)** addresses an individual's **eligibility for certification** after satisfying the ineligibility period for a denial, suspension or revocation.

The Workgroup discussed at length the current requirements for reconsideration. The current rule requires that an individual submit a request to be reviewed by the Policy Committee and the Board for an eligibility determination. The Policy Committee and the Board would review the request with any supporting documentation provided, weigh aggravation and mitigation, and make a recommendation regarding the individual's eligibility to reapply for certification. If the Policy Committee and the Board determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated, then the individual must remain ineligible to apply for certification.

The Workgroup's discussions identified that when an individual wants to return to a certifiable position they want to know that they will be able to apply for employment and conversely, when an employer receives an application from an individual whose

certifications have been denied, suspended or revoked that they will be able to hire someone who is eligible for certification. Attempting to preserve recognition of each need created a circular set of responsibilities that seemed contradictory. (Which should come first, the employer who wants to hire an applicant recommending that the individual be eligible for certification or should the applicant be able to show the employer that they are eligible to pursue certification?)

The outcome of the Workgroup's discussions resulted in the recommendation to treat the satisfaction of the ineligibility period as the basis for eligibility to reapply for employment and certification. With this recommendation, no further review of the original conduct resulting in the denial, suspension or revocation would be required prior to reemployment and because the ineligibility period has been satisfied, the conduct that initiated the denial, suspension or revocation would not be cause to deny new applications.

An individual's DPSST record will reflect the expiration date of the ineligibility period. Reference Attachment C as a sample.

Any time an individual returns to a certifiable position after a denial, suspension or revocation, they must meet the minimum employment, training and certification standards.

**Content Deletion:** The following language exists in current rule. This allows for a person to request eligibility if the denial/revocation standard changes or if a judgment is changed or expunged.

The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional.

The Workgroup approved deletion of this language in recognition that, at the time of the denial or revocation, the conduct that resulted in denial or revocation constituted mandatory grounds. The individual was considered to have violated the standards at that time and to consider that they may not any longer contradicts the intent of the rule language that states that:

Standards and Certification must take action on any conduct that has been determined to be a mandatory disqualifier regardless of when the conduct occurred unless Standards and Certification, or the Board, has previously reviewed the conduct and determined the conduct not to be disqualifying under a previous set of standards.

Any application for training or certification submitted by an individual whose certifications have been denied or revoked for mandatory grounds as defined in subsection (2) (a) of this rule will be denied pursuant to section (6) of this rule.

**Section (5)** includes the addition of language regarding suspension pertaining to the scope of action on an individual's certifications.

**Section (6)** outlines the **contested case process**. The draft language amends the Stipulated Order to reflect a voluntary agreement to permanently revoke all certifications in lieu of their professional standards case being reviewed by a Policy Committee and the Board, and the right to a hearing is waived.

**Subsection (6)(e)** includes an addition prohibiting an administrative law judge from adjusting an ineligibility period, established by the Board, during the contested case hearing process. Though it is clear that the authority to establish ineligibility periods lies with the Board, it is not uncommon for administrative law judges to attempt to adjust these periods based on their opinions resulting in Proposed Orders having to be amended and presented to the Policy Committee and Board before becoming final.

**Subsection (6)(g)** includes new language to recognize a process for **surrender of certifications**. Inclusion of this language sets the standard that while an individual may voluntarily surrender their certifications, DPSST may still obtain further information from the employer or conduct an investigation to determine if the individual may have violated the moral fitness standard prior to DPSST accepting the surrender.

**DPSST Staff's Supporting Recommendations:**

OARs 259-008-0005, 259-008-0010, 259-008-0011 and 259-008-0080 have been included in this proposed rule change based on the references that connect these rules to OAR 259-008-0070 and the denial, suspension and revocation standards.

DPSST Staff recommends the deletion the definition for "Suspension" that is contained in OAR 259-008-0005 (Definitions). The existing definition ties suspension to certification maintenance standards. In keeping in line with the deletion of the definition section contained in OAR 259-008-0070 (Denial/Suspension/Revocation), staff did not develop a draft for an alternate definition of suspension.

The proposed changes to OAR 259-008-0010 (Minimum Standards for Employment as a Law Enforcement Officer or Utilization as a Reserve Officer), OAR 259-008-0011 (Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher) and OAR 259-008-0080 (Certification of Instructors) are minor housekeeping changes to update the citations in each of the rules pertaining to sections referenced in the draft of OAR 259-008-0070 (Denial/Suspension/Revocation).

## **Draft Rule Language:**

The following section (**pages 13-24**) provides the DRAFT language for OAR 259-008-0070. It is presented without the bold and underline throughout the text to make it easier to read.

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### **259-008-0070**

#### **Denial/Suspension/Revocation**

**(1) It is the responsibility of the Board to set the minimum standards**, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.

**(2) Mandatory Grounds for Denying or Revoking Certifications of a Public Safety Professional.**

(a) The Department must deny or revoke the certifications of any public safety professional after written Notice, and a hearing if requested, based upon a finding that:

(A) The public safety professional has been discharged for cause from employment as a public safety professional.

(i) For the purposes of this rule, “discharged for cause” means an employer initiated termination of employment as a public safety professional for conduct that falls within any of the following categories and that occurred while acting under the color of office:

(I) Deliberately obtaining false confessions;

(II) Initiating false arrests;

(III) Creation and use of falsified evidence, including false testimony;

(IV) Intimidation: Includes wrongfully compelling an individual to abstain from doing, or to do, any act which the individual has a legal right to do or abstain from doing;

(V) Brutality: Includes the use of any force exceeding that reasonably necessary to accomplish a lawful enforcement purpose;

(VI) Corruption: Includes the abuse of a public safety professional's authority for personal gain, to gain advantage for a public or private safety agency or to attempt or succeed in depriving another person or persons of their legal rights; or

(VII) Sexual abuse.

(ii) If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action, pending a final determination.

(B) The public safety professional has a conviction for an offense designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional has a conviction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except the Board, in consultation with a Policy Committee, may deny certification under section (4) of this rule for a criminal disposition for possession of less than one ounce of marijuana that occurred prior to July 1, 2015 and prior to public safety certification;

(D) The offense for which the public safety professional's conviction required registration as a sex offender; or

(E) The offense for which the public safety professional's conviction involves any elements of domestic violence as defined in ORS 135.230 or the offense involves elements of abuse as defined in ORS 107.705 against a child who is 18 years of age or younger and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as the public safety professional.

(b) The Department must take action on any conduct that has been determined to be a mandatory disqualifier regardless of when the conduct occurred unless the Department, or the Board, has previously reviewed the conduct and determined the conduct not to be disqualifying under a previous set of standards.

(c) Denial or revocation for mandatory grounds will be subject to the contested case procedure in section (6) of this rule.

(d) Any application for training or certification submitted by an individual whose certifications have been denied or revoked for mandatory grounds as defined in subsection (2) (a) of this rule will be denied pursuant to section (6) of this rule.

**(3) Emergency Suspension:** If, upon a review pursuant to subsection (4) (f) of this rule, the Policy Committee and Board find that there is a serious danger to public health and safety, the Department may issue an Emergency Suspension Order, pursuant to OAR 137-003-0560, immediately suspending a public safety professional's certifications.

(a) An Emergency Suspension Order will be served on the public safety professional, by the Department, following the contested case notice process outlined in section (6) of this rule.

(b) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the certification of a public safety professional.

(c) A public safety professional, whose certifications have been suspended by an Emergency Suspension Order, is prohibited from performing the duties of a public safety professional beginning on the date the Emergency Suspension Order is served on the public safety professional.

(d) The emergency suspension will remain in effect until the issuance of a Final Order to revoke certifications or receipt of evidence provided to the Department that the affected public safety professional no longer poses a serious danger to public health and safety.

**(4) Discretionary Grounds for Denying, Suspending or Revoking Certifications of a Public Safety Professional.**

(a) The Board, through a Policy Committee, may deny, suspend or revoke the certifications of any public safety professional after written Notice, and a hearing if requested, based upon a finding that the public safety professional engaged in misconduct. For the purposes of this rule, misconduct is defined as:

(A) Conduct that resulted in a criminal disposition for any offense other than convictions constituting mandatory grounds as defined in subsection (2) (a) of this rule. For the purpose of this section, a criminal disposition includes a conviction, violation, adjudication, an entered plea of guilty or no contest, or a finding of guilty except for insanity or its equivalent, for any offense punishable as a crime in this state or any other jurisdiction.

(B) Conduct that includes any of the elements identified in subsection (4) (f) of this rule;

(C) Conduct that fails to meet the applicable standards as described in OAR Chapter 259 Division 012, or any of the administrative rules promulgated under ORS 181A.410;

(D) Falsification of any information on any documents submitted to the Board or the Department; or

(E) A police officer's failure to attend at least one session with a mental health professional within six months after the police officer was involved in using deadly physical force, as required by ORS 181A.790.

(b) Standards and Certification will initiate a professional standards case upon receipt or discovery of information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals. For the purpose of this rule, receipt of information may include, but is not limited to:

- (A) Notification of an arrest, a criminal citation to appear or its equivalent, a conviction, or any other criminal disposition, of a certified public safety professional or a public safety professional who is employed in a certifiable position but is not yet certified;
- (B) Notification of a non-voluntary separation of employment from a certifiable position; or
- (C) Any complaint submitted to the Department alleging that a public safety professional has potentially engaged in misconduct as defined in subsection (4) (a) of this rule.

(c) All complaints will be reviewed by Standards and Certification to determine if the allegations, if founded, may violate the statutory and administrative rule requirements for employment and certification of a public safety professional. Complaints determined to fall outside of DPSST's jurisdiction will be administratively closed.

- (A) Standards and Certification will work with the public safety professional's employing agency upon receipt of a complaint containing allegations that a public safety professional has engaged in conduct that, if proven, may violate the statutory and administrative rule requirements for employment and certification of a public safety professional to determine if there is a reasonable basis to proceed with a professional standards case. Standards and Certification will defer any further investigation, discipline or remedy to the employing agency when a complaint is received against a public safety professional who is currently employed. The employing agency will be required to respond to Standards and Certification that the allegations made in the complaint have been reviewed and handled in an appropriate manner as dictated by the employing agency.
- (B) Complaints made against a certified public safety professional who is not currently employed in a certifiable position; complaints made against an employed public safety professional whose employing agency is non-responsive to Standards and Certification's requests for further review; or complaints made against an elected official serving as a public safety professional that may fall within the Department's statutory and administrative rule requirements for denial,

suspension or revocation may be presented to a Policy Committee for disposition, up to and including initiating a Standards and Certification investigation.

(d) The following are guidelines for Standards and Certification to administratively close a professional standards case involving a criminal disposition for any offense other than convictions constituting mandatory grounds as defined in subsection (2) (a) of this rule:

(A) Standards and Certification will administratively close any case involving a criminal disposition that occurred prior to January 1, 2001 when that criminal disposition represents the only criminal disposition in the individual's history.

(B) Standards and Certification will administratively close any case based on a criminal disposition that was reviewed by Standards and Certification or the Board under the standards in place prior to **April 1, 2017** and determined to not meet the statutory and administrative rule requirements for denial, suspension or revocation under previous administrative rules.

(C) Standards and Certification will administratively close any deferred adjudications in which the only charge is for ORS 813.010 (Driving Under the Influence of Intoxicants) upon confirmation of dismissal.

(D) Nothing in this rule precludes a Policy committee and the Board from considering previous criminal dispositions as an aggravating factor in a separate disciplinary investigation.

(e) Review of a Professional Standards Case by Standards and Certification:

(A) When Standards and Certification receives factual information from any source, Standards and Certification will review the information to determine if the conduct may meet statutory and administrative rule requirements for denial, suspension or revocation by initiating a professional standards case.

(B) Standards and Certification may recommend administrative closure of a professional standards case to the Policy Committee if:

(i) Standards and Certification determines that the conduct being reviewed does not meet the statutory and administrative rule requirements for denial, suspension or revocation; or

(ii) The conduct being reviewed involves a criminal disposition where:

(iii) The criminal disposition occurred seven years or more prior to the date the public safety professional began employment as a public safety professional;

(iv) The criminal disposition represents the only criminal disposition in the public safety professional's history;

- (v) The conduct involved did not include dishonesty or deceit;
- (vi) The public safety professional has completed any court-ordered form of supervision; and
- (vii) The public safety professional does not have any unpaid restitution, court fines or fees resulting from the criminal disposition.

(C) If Standards and Certification determines that the conduct being reviewed may meet the statutory and administrative rule requirements for denial, suspension or revocation, but is not supported by adequate factual information, Standards and Certification may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation of the matter.

(D) If Standards and Certification determines that a public safety professional may have engaged in misconduct listed in subsection (4) (a) of this rule, the case may be presented to the Board, through a Policy Committee.

(E) When Standards and Certification presents a professional standards case to the Board, through a Policy Committee, a notification will be sent to the affected public safety professional by Standards and Certification. The notification will include the deadlines for the affected public safety professional to present to the Board, through a Policy Committee, evidence of factors that may support mitigation. A public safety professional may present mitigation evidence by one or both of the following:

- (i) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to Standards and Certification for Policy Committee and Board consideration;
- (ii) Arranging with Standards and Certification to attend the Policy Committee and present a verbal statement. Verbal statements are limited to a maximum of five minutes and must be presented, in person, by the affected public safety professional, or the representative of their choice.

(F) In professional standards cases where there has been an arbitrator's opinion related to the public safety professional's employment, Standards and Certification will proceed as follows:

- (i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, Standards and Certification will proceed as identified in subsections (4) (e) and (f) of this rule.
- (ii) If the arbitrator has ordered employment reinstatement after a non-voluntary separation of employment without a finding related to whether

the misconduct occurred, Standards and Certification will proceed as identified in subsections (4) (e) and (f) of this rule.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegations of misconduct, Standards and Certification will recommend administrative closure of the professional standards case, unless Standards and Certification receives or discovers additional information that would lead an objectively reasonable person to conclude that the public safety professional has violated Board established employment, training, or certification standards for Oregon public safety professionals.

(f) Review of a Professional Standards Case by the Board in Consultation with a Policy Committee.

(A) In order to determine whether or not the conduct engaged in by a public safety professional demonstrates a lack of moral fitness, the Board, in consultation with a Policy Committee, will review the misconduct for the following elements:

- (i) Dishonesty: Includes conduct that is knowingly dishonest and includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth;
- (ii) Disregard for the Rights of Others: Includes conduct that knowingly violates the constitutional or civil rights of others;
- (iii) Misuse of Authority: Includes the use or attempt to use one's position to obtain a benefit, avoid a detriment, or harm another while acting under the color of office; or
- (iv) Gross Misconduct: Includes behavior that deliberately or recklessly disregards the law, threatens persons or property or the efficient operations of any agency.

(B) In making a decision to authorize initiation of proceedings under section (6) of this rule, the Policy Committees and the Board must consider, at a minimum, the following mitigating and aggravating circumstances:

- (i) Whether the conduct occurred before, during or after the public safety professional's employment in public safety;
- (ii) Whether the public safety professional engaged in the same conduct more than once and over what period of time;
- (iii) Whether the conduct occurred while the public safety professional was acting in the official capacity of a public safety professional;

- (iv) Whether the public safety professional has been reviewed by a Policy Committee or Board for prior conduct;
- (v) Whether the conduct involved any elements of domestic violence as defined in ORS 135.230 or child abuse as defined in ORS 419B.005 where the child involved is 18 years of age or younger and is a natural child, adopted child, stepchild, a child under the guardianship of or a child dwelling in the same household as the public safety professional;
- (vi) Whether the public safety professional self-reported the conduct;
- (vii) Whether the conduct resulted in a criminal disposition and if so:
  - (I) The classification of the crime or violation for which the public safety professional was convicted, adjudicated, plead guilty or no contest to, or was found guilty except or insanity or its equivalent;
  - (II) The date of the criminal disposition;
  - (III) The age of the public safety professional at the time of the offense that resulted in the criminal disposition;
  - (IV) Whether the public safety professional was sentenced to prison, jail time or probation;
  - (V) Whether restitution was ordered and all court ordered obligations have been met;
  - (VI) Whether the public safety professional has more than one criminal disposition; and
- (viii) Documents and statements provided for mitigation by the public safety professional when provided in accordance with paragraph (4) (e) (E) of this rule.

(C) Employment and Certification Ineligibility Period:

- (i) When the Board, in consultation with a Policy Committee, determines that the discretionary misconduct being reviewed includes one or more of the elements defined in paragraph (4) (f) (A) of this rule and that the misconduct rises to the level to warrant denial, suspension or revocation of a public safety professional's certifications, the Board, in consultation with a Policy Committee, will determine how long the public safety professional will be ineligible for public safety certifications and employment in a certifiable public safety professional position based on the totality of the professional standards case which includes review of the

misconduct and factors supporting aggravation or mitigation pursuant to paragraphs (4)(f)(A) and (B) of this rule.

(ii) The minimum and maximum periods of ineligibility are identified for each element as follows:

(I) Dishonesty: Ineligibility period: 10 years to lifetime;

(II) Disregard for the Rights of Others: Ineligibility period: three to 15 years;

(III) Misuse of Authority: Ineligibility period: three to 10 years;

(IV) Gross Misconduct: Ineligibility period: three to 10 years;

(iii) An individual whose certifications have been denied, suspended or revoked is prohibited from performing the duties of a certifiable public safety professional.

(iv) The minimum period of ineligibility will be included in any Final Order of the Department.

(v) The ineligibility period will cease when the applicable timeframe stated in the Final Order has been satisfied.

(vi) If the Board determines that the public safety professional is ineligible because of a criminal disposition, the first day of the ineligibility period is the date that the judgment of disposition was entered.

(vii) If the Board determines that the public safety professional is ineligible due to a non-voluntary separation from employment as a public safety professional, the first day of the ineligibility period is the date of the separation from a certifiable position as reported to Standards and Certification pursuant to OAR 259-008-0020.

(g) The Board's decision to deny, suspend or revoke certifications will be subject to the contested case procedure described in section (6) of this rule.

(h) Denial of Certifications. If the Board, in consultation with a Policy Committee, reviews an individual's application and determines that the individual is ineligible for public safety certifications the individual's certification will be denied for the ineligibility period established by the Board. Denial of certification based on an application may be combined with the suspension or revocation of all public safety professional certifications.

(i) Suspension of Certifications. If the Board, in consultation with a Policy Committee, determines that the public safety professional is ineligible for public safety certifications and employment in a certifiable public safety professional position for a period of time between three to five years, the public safety professional's certifications will be suspended for the ineligibility period established by the Board.

(j) Revocation of Certifications. If the Board, in consultation with a Policy Committee, determines that the public safety professional is ineligible for public safety certifications and employment in a certifiable public safety professional position for a period of time greater than five years, the public safety professional's certifications will be revoked and the public safety professional will be ineligible for certification for the ineligibility period established by the Board.

(k) Eligibility for Certifications after Satisfying an Ineligibility Period:

(A) An individual whose certifications were denied, suspended or revoked is prohibited from performing the duties of a certifiable public safety professional until the ineligibility period stated in the Final Order has been satisfied.

(B) In order to be eligible for the award of certifications after satisfying an ineligibility period, the public safety professional must meet all of the minimum requirements for employment, training and certification as described in OAR Chapter 259 Division 008.

(C) Any application for training or certification submitted by an individual whose ineligibility period has not been satisfied or whose certifications have been denied or revoked for misconduct that the Board, in consultation with a Policy Committee, determined to include the element of dishonesty and determined to have a lifetime ineligibility period, will be denied pursuant to section (6) of this rule.

**(5) Scope of Suspension or Revocation.** Whenever the Department suspends or revokes the certifications of any public safety professional under the provisions of OAR 259-008-0070, the suspension or revocation will encompass all public safety certifications, subject to these administrative rules, the Department has issued to that person.

**(6) Initiation of Proceedings:** Upon determination to proceed with denial, suspension or revocation, a Contested Case Notice will be prepared and served on the public safety professional by the Department.

(a) Contested Case Notice:

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a Policy Committee, the Contested Case Notice will be served on the public safety professional prior to Board review. If the Board disapproves the Policy Committee's recommendation, the Department will withdraw the Contested Case Notice.

(b) Response Time:

(A) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order in which to file a written request for a hearing with the Department.

(B) A party who has been served with a Contested Case Notice of Intent to Deny Certification has 60 days from the date of mailing or personal service of the Notice in which to file a written request for a hearing with the Department.

(C) A party who has been served with a Contested Case Notice of Intent to Revoke Certification has 20 days from the date of mailing or personal service of the Notice in which to file a written request for hearing with the Department.

(D) A party who has been served with a Contested Case Notice of Intent to Suspend Certification has 20 days from the date of mailing or personal service of the Notice in which to file a written request for a hearing with the Department.

(c) Default Orders:

(A) If a timely request for a hearing is not received, the Contested Case Notice will become a Final Order denying, suspending or revoking certification pursuant to OAR 137-003-0672.

(B) If a timely request for a hearing is not received in cases heard by a Policy Committee, the Contested Case Notice will become a Final Order denying, suspending or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(d) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(e) Proposed and Final Orders:

(A) In cases in which a hearing is requested, Proposed Orders, Exceptions, and Final Orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a Proposed Order issued by an Administrative Law Judge in a case that was originally reviewed by a Policy

Committee and the Board must be considered by the Policy Committee and their recommendation approved by the Board before a Final Order can be issued.

(C) The administrative law judge presiding at a contested case hearing may not adjust the ineligibility period determined by the Board under paragraph (4)(f)(C) of this rule.

(f) The Department may enter a Stipulated Order permanently revoking the certifications of a public safety professional upon the individual's voluntary agreement to terminate an administrative proceeding to revoke all public safety certifications. Any application for training or certification submitted by an individual whose certifications have been revoked through a Stipulated Order will be denied pursuant to section (6) of this rule.

(g) A public safety professional may request the Department accept the surrender of their certifications.

(A) In considering whether to accept the request to surrender public safety certifications, Standards and Certification may request further information from the employer pursuant to ORS 181A.670 or conduct its own investigation to determine if any minimum standards for certification have been violated and proceed pursuant to this rule.

(B) The public safety professional will remain certified until the Department accepts the surrender.

(C) Once the surrender has been accepted by the Department, the individual may no longer perform the duties of a certifiable public safety professional.

(h) Appeal Procedure. A public safety professional, aggrieved by the findings and an Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

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The following section (**pages 25-43**) provides the CURRENT language for OAR 259-008-0070. It is presented with the ~~strikethrough~~ text as it would be replaced in its entirety by the proposed rule language.

## **259-008-0070**

### **Denial/Revocation**

~~(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.~~

~~(2) Definitions. For purposes of this rule, the following definitions apply:~~

~~(a) "Denial" or "Deny" means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.~~

~~(b) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-008-0070(4).~~

~~(c) "Revocation" or "Revoke" means to withdraw the certification of a public safety professional for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.~~

~~(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional:~~

~~(a) Standards and Certification must deny or revoke the certification of any public safety professional after written notice and hearing, based upon a finding that:~~

~~(A) The public safety professional has been discharged for cause from employment as a public safety professional. For purposes of this rule, "discharged for cause," means an employer initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by Standards and Certification of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional provides notice to Standards and Certification within the time stated in the NOI that the discharge has not become final, then Standards and Certification may stay further action, pending a final determination.~~

~~(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;~~

~~(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.~~

~~(iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;~~

~~(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional that remedial measures have been unable to correct; or~~

~~(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.~~

~~(B) The public safety professional has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;~~

~~(C) The public safety professional has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or~~

~~(D) The public safety professional has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:~~

~~25.785(3) (False Submission of a Statement Regarding Social Security Number);~~

~~106.041(5) (Intentional False Statement on Marriage License; Application);~~

~~162.075 (False swearing);~~

~~162.085 (Unsworn falsification);~~

~~162.145 (Escape in the third degree);~~

~~162.175 (Unauthorized departure);~~

~~162.195 (Failure to appear in the second degree);~~

~~162.235 (Obstructing governmental or judicial administration);~~

~~162.247 (Interfering with a peace officer);~~  
~~162.257 (Interfering with a firefighter or emergency medical technician);~~  
~~162.295 (Tampering with physical evidence);~~  
~~162.305 (Tampering with public records);~~  
~~162.315 (Resisting arrest);~~  
~~162.335 (Compounding);~~  
~~162.365 (Criminal impersonation);~~  
~~162.369 (Possession of false law enforcement identification);~~  
~~162.375 (Initiating a false report);~~  
~~162.385 (Giving false information to a peace officer for a citation or arrest warrant);~~  
~~162.415 (Official misconduct in the first degree);~~  
~~163.200 (Criminal mistreatment in the second degree);~~  
~~163.454 (Custodial sexual misconduct in the second degree);~~  
~~163.687 (Encouraging child sexual abuse in the third degree);~~  
~~163.732 (Stalking);~~  
~~164.045 (Theft in the second degree);~~  
~~164.085 (Theft by deception);~~  
~~164.095 (Theft by receiving);~~  
~~164.125 (Theft of services);~~  
~~164.235 (Possession of a burglary tool or theft device);~~  
~~164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment);~~  
~~165.007 (Forgery in the second degree);~~  
~~165.017 (Criminal possession of a forged instrument in the second degree);~~  
~~165.037 (Criminal simulation);~~

~~165.042 (Fraudulently obtaining a signature);~~  
~~165.047 (Unlawfully using slugs);~~  
~~165.055 (Fraudulent use of a credit card);~~  
~~165.065 (Negotiating a bad check);~~  
~~165.080 (Falsifying business records);~~  
~~165.095 (Misapplication of entrusted property);~~  
~~165.100 (Issuing a false financial statement);~~  
~~165.102 (Obtain execution of documents by deception);~~  
~~165.118(1) (Unlawfully Altering Metal Property);~~  
~~165.118(2)(a)(b) (False Statement on a Metal Property Record);~~  
~~165.825 (Sale of drugged horse);~~  
~~166.065(1)(b) (Harassment);~~  
~~166.155 (Intimidation in the second degree);~~  
~~166.270 (Possession of weapons by certain felons);~~  
~~166.350 (Unlawful possession of armor piercing ammunition);~~  
~~166.416 (Providing false information in connection with a transfer of a firearm);~~  
~~166.418 (Improperly transferring a firearm);~~  
~~166.470 (Limitations and conditions for sales of firearms);~~  
~~167.007 (Prostitution);~~  
~~167.075 (Exhibiting an obscene performance to a minor);~~  
~~167.080 (Displaying obscene materials to minors);~~  
~~167.132 (Possession of gambling records in the second degree);~~  
~~167.147 (Possession of a gambling device);~~  
~~167.222 (Frequenting a place where controlled substances are used);~~  
~~167.262 (Adult using minor in commission of controlled substance offense);~~

~~167.320 (Animal abuse in the first degree);~~  
~~167.330 (Animal neglect in the first degree);~~  
~~167.332 (Prohibition against possession of domestic animal);~~  
~~167.333 (Sexual assault of animal);~~  
~~167.337 (Interfering with law enforcement animal);~~  
~~167.355 (Involvement in animal fighting);~~  
~~167.370 (Participation in dogfighting);~~  
~~167.431 (Participation in cockfighting);~~  
~~167.820 (Concealing the birth of an infant);~~  
~~305.815 (False Swearing of Return, Statement or Other Tax Document);~~  
~~307.990 (Willful False Statement to Property Tax Assessment Officer);~~  
~~398.224 (Refusal to Appear to Testify);~~  
~~462.415(2) (Racing a Prohibited Animal);~~  
~~462.420 (Stimulating or Depressing Participating Animal);~~  
~~462.430 (Influencing the Results of Races);~~  
~~462.450 (Possession, Transportation or Use of Drugs at Race Course);~~  
~~462.460 (Racing an Animal Under Name or Designation Other than Registered Name or Designation or Altering License);~~  
~~462.470 (Aiding or Abetting Racing Animal Under Name or Designation Other than Registered Name or Designation);~~  
~~475.525 (Sale of drug paraphernalia);~~  
~~475.840 (Manufacture or deliver a controlled substance);~~  
~~475.860 (Unlawful delivery of marijuana);~~  
~~475.864 (Unlawful possession of marijuana);~~  
~~475.906 (Distribution of controlled substance to minors);~~  
~~475.910 (Application of controlled substance to the body of another person);~~

475.912 (Unlawful delivery of imitation controlled substance);  
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance);  
475.916 (Prohibited acts involving records and fraud);  
475.918 (Falsifying drug test results);  
475.920 (Providing drug test falsification equipment);  
475.950 (Failure to report precursor substances transaction);  
475.955 (Failure to report missing precursor substances);  
475.960 (Illegally selling drug equipment);  
475.965 (Providing false information on precursor substances report or record);  
475.969 (Unlawful possession of phosphorus);  
475.971 (Unlawful possession of anhydrous ammonia);  
475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution);  
475.975 (Unlawful possession of iodine in its elemental form);  
475.976 (Unlawful possession of iodine matrix);  
657.300 (False Statements or Failure to Report Material Fact by Employer);  
657.495 (Fraudulently Lowering Contributions);  
658.415 (False Swearing or Affirmation of Application of License, Proof of Insurance and Financial Responsibilities of Farm Labor Contractors);  
659.810 (Filing a False Statement with Employment Agency to Secure Labor);  
679.170(3) (Fraudulent Alteration of Diploma, Certificate or Transcript);  
679.170(5) (Willful False Statement to Oregon Board of Dentistry);  
689.995 (Willfully Furnishing False Information; Pharmacists, Drug Outlets, Drug Sales);  
807.520 (False swearing to receive license);  
807.620 (Giving false information to police officer);

~~(E) Any offense involving any acts of domestic violence as defined in ORS 135.230.~~

~~(b) Standards and Certification must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless Standards and Certification, or the Board, has previously reviewed the conviction and approved the public safety professional for certification under a prior set of standards.~~

~~(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional:~~

~~(a) Standards and Certification may deny or revoke the certification of any public safety professional after written notice, and a hearing, if requested, based upon a finding that:~~

~~(A) The public safety professional falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;~~

~~(B) The public safety professional has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;~~

~~(C) The public safety professional has engaged in conduct that resulted in the conviction of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; or~~

~~(D) A public safety officer failed to attend at least one session with a mental health professional within six months after the public safety officer was involved in using deadly physical force, as required by ORS 181.789.~~

~~(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:~~

~~(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;~~

~~(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public;~~

~~(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office;~~

~~(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;~~

~~(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. By definition, all criminal convictions meet the definition of Misconduct within this category.~~

**NOTE:** It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

~~(F) Category VI: Insubordination: Includes a refusal by a public safety professional to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.~~

~~(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime.~~

**NOTE:** Those criminal convictions not listed below are presumptively considered Misconduct (Category V):

~~25.260 (Unlawful Disclosure of Confidential Records of Child Support Division) — Category II;~~

~~162.405 (Official Misconduct in the Second Degree) — Category III;~~

~~162.425 (Misuse of Confidential Information) — Category III;~~

~~162.465 (Unlawful Legislative Lobbying) — Category I;~~

~~163.160 (Assault in the Fourth Degree) — Category II;~~

~~163.187 (Strangulation) — Category II;~~

~~163.190 (Menacing) — Category II;~~

~~163.195 (Recklessly Endangering Another Person) — Category IV;~~

~~163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV;~~

~~163.415 (Sexual Abuse in the Third Degree)~~ — Category II;

~~163.435 (Contributing to the Sexual Delinquency of a Minor)~~ — Category II;

~~163.445 (Sexual Misconduct)~~ — Category II;

~~163.465 (Public Indecency)~~ — Category II;

~~163.467 (Private Indecency)~~ — Category II;

~~163.545 (Child Neglect in the Second Degree)~~ — Category IV;

~~163.693 (Failure to Report Child Pornography)~~ — Category IV;

~~163.575 (Endangering the Welfare of a Minor)~~ — Category III;

~~163.700 (Invasion of Personal Privacy)~~ — Category II;

~~163.709 (Unlawful Directing of Light from a Laser Pointer)~~ — Category IV;

~~164.162 (Mail Theft or Receipt of Stolen Mail)~~ — Category I;

~~164.265 (Criminal Trespass While in Possession of a Firearm)~~ — Category IV;

~~164.272 (Unlawful Entry into a Motor Vehicle)~~ — Category IV;

~~164.335 (Reckless Burning)~~ — Category IV;

~~164.785 (Placing Offensive Substances in waters/on highways or property)~~ — Category IV;

~~164.845 (FTA on Summons for ORS 164.813 or 164.825)~~ — Category IV;

~~164.887 (Interference with Agricultural Operations)~~ — Category II;

~~165.540 (Obtaining Contents of Communications)~~ — Category IV;

~~165.570 (Improper Use of Emergency Reporting System)~~ — Category IV;

~~165.572 (Interference with Making a Report)~~ — Category II;

~~165.577 (Cellular Counterfeiting in the Third Degree)~~ — Category I;

~~165.805 (Misrepresentation of Age by a Minor)~~ — Category I;

~~166.025 (Disorderly Conduct in the Second Degree)~~ — Category IV;

~~166.027 (Disorderly Conduct in the First Degree)~~ — Category IV;

166.075 (Abuse of Venerated Objects) — Category II;

166.076 (Abuse of a Memorial to the Dead) — Category II;

166.090 (Telephonic Harassment) — Category II;

166.095 (Misconduct with Emergency Telephone Calls) — Category IV;

166.155 (Intimidation in the Second Degree) — Category II;

166.180 (Negligently Wounding Another) — Category IV;

166.190 (Pointing a Firearm at Another) — Category IV;

166.240 (Carrying a Concealed Weapon) — Category IV;

166.250 (Unlawful Possession of a Firearm) — Category IV;

166.320 (Setting of a Springgun or Setgun) — Category IV;

166.385 (Possession of Hoax Destructive Device) — Category IV;

166.425 (Unlawful Purchase of Firearm) — Category I;

166.427 (Register of Transfers of Used Firearms) — Category IV;

166.480 (Sale or Gift of Explosives to Children) — Category IV;

166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV;

166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV;

166.649 (Throwing Object off Overpass in the Second Degree) — Category IV;

167.312 (Research and Animal Interference) — Category II;

167.315 (Animal Abuse in the Second Degree) — Category IV;

167.325 (Animal Neglect in the Second Degree) — Category IV;

167.340 (Animal Abandonment) — Category IV;

167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV;

167.385 (Unauthorized Use of Livestock Animal) — Category II;

167.388 (Interference with Livestock Production) — Category II;

167.808 (Unlawful Possession of Inhalants) — Category IV;

167.810 (Creating a Hazard) — Category IV;

167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV;

241.525 (Corrupt Practices) — Category III;

Chapter 319 (Any Violation Involving a False Statement — Motor Vehicle and Aircraft Fuel Tax) — Category I;

411.320 (Disclosure and Use of Public Assistance Records) — Category II;

468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category IV;

471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV;

609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) — Category I;

609.990(3)(a) (Violation of ORS 609.098 — Maintaining a Dangerous Dog) — Category IV;

632.470 (False Representation as to Raising, Production or Packaging) — Category I;

632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products) — Category I;

657.295 (Violation of Unemployment Insurance Witness Fees, Disputed Claims Expenses and Counsel Fees) — Category I;

659.800 (Use of Force or Misrepresentation to Prevent Employment) — Category I;

659.805 (Blacklisting and Blackmailing) — Category II;

659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) — Category I;

659.845 (Fraudulently Accepting Advancement and Refusing to Work) — Category I;

661.040 (Violation of Limitations of Fees Charged laborers by Collective Bargaining Agents) — Category I;

661.260 (False Filing or Fraudulent Filing) — Category I;

688.120 (Fraudulent Representation as a Physical Therapist or Physical Therapist Assistant) — Category I;

731.260 (False or Misleading Filings; Insurance Code) — Category I;

803.225 (Failure to Designate Replica Vehicle in Title or Registration Application) — Category I;

807.430 (Misuse of Identification Card) — Category I;

807.510 (Transfer of documents for the purpose of misrepresentation) — Category I;

807.530 (False Application for License) — Category I;

807.580 (Using Invalid License) — Category I;

807.590 (Permitting Misuse of License) — Category I;

807.600 (Using Another's License) — Category I;

811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category IV;

811.140 (Reckless Driving) — Category IV;

811.182 (Criminal Driving While Suspended or Revoked) — Category IV;

811.231 (Reckless Endangerment of Highway Workers) — Category IV;

811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV;

811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category IV;

811.740 (False Accident Report) — Category I;

813.010 (Driving Under the Influence of Intoxicants) — Category IV;

825.990(3)(d) (False Material Statement or Representation in any Application, Label, Manifest, Record, Report, Permit or Other Document Filed, Maintained or Used for Purposes of Compliance) — Category I;

825.990(3)(e) (Failure to Include Material Information Required by Department of Transportation) — Category I;

830.035(2) (Fleeing; Attempts to Elude) — Category IV;

830.053 (False or Fraudulent Report of Theft of Boat) — Category I;

830.315(1) (Reckless Operation) — Category IV;

~~830.325 (Operate a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV;~~

~~830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category IV;~~

~~830.730 (False Information) — Category I;~~

~~830.994 (Operate a Boat in Violation of a Court Order) — Category IV;~~

~~837.080 (Prohibited Operation of an Aircraft) — Category IV.~~

~~(d) Initial Periods of Ineligibility.~~ Upon determination to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

~~(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:~~

~~(A) Category I: Dishonesty (5 years to Lifetime).~~

~~(B) Category II: Disregard for Rights of Others (5 years to 15 years).~~

~~(C) Category III: Misuse of Authority (5 years to 10 years).~~

~~(D) Category IV: Gross Misconduct (5 years to 10 years).~~

~~(E) Category V: Misconduct (3 years to 7 years).~~

~~(F) Category VI: Insubordination (3 years to 7 years).~~

~~(5) Eligibility to Reapply; Ineligibility Periods.~~ A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

~~(a) Mandatory grounds identified in section (3) of this rule; or~~

~~(b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.~~

~~(6) Eligibility to reapply for certification:~~

~~(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will~~

~~take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.~~

~~(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.~~

~~(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.~~

~~(7) Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct. In determining whether to take action on a conviction, Standards and Certification must use the following guidelines:~~

~~(a) In making a decision on a discretionary denial or revocation, Standards and Certification will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety professionals adopted in 2001.~~

~~(b) Standards and Certification will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, Standards and Certification may consider such conviction as evidence that a public safety professional does not meet the established moral fitness guidelines.~~

~~(c) Standards and Certification may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001; however, crimes with a presumptive category of only Misconduct (Category V) may be appropriate for summary staff disposition or administrative closure if the conviction occurred seven years or more prior to the date of review and it represents the sole criminal conviction in the public safety professional's history.~~

~~(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional.~~

~~(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.~~

~~(f) Standards and Certification will not take action against a public safety professional or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.~~

~~(g) Standards and Certification may take action against a public safety professional or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.~~

~~(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.~~

~~(9) Denial and Revocation Procedure.~~

~~(a) Agency Initiated Review: When the entity utilizing a public safety professional requests that a public safety professional's certification be denied or revoked, it must submit in writing to Standards and Certification the reason for the requested denial or revocation and all factual information supporting the request.~~

~~(b) Standards and Certification Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, Standards and Certification may request that the public safety professional's certification be denied or revoked.~~

~~(c) Standards and Certification Staff Review: When Standards and Certification receives information, from any source, that a public safety professional may not meet the established standards for Oregon public safety professionals, Standards and Certification will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.~~

~~(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation Standards and Certification will notify the requestor.~~

~~(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, Standards and Certification will request further information from the employer or conduct its own investigation of the matter.~~

~~(C) If Standards and Certification determines that a public safety professional may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.~~

~~(D) Standards and Certification will seek input from the affected public safety professional, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.~~

~~(E) In misconduct cases where there has been an arbitrator's opinion related to the public safety professional's employment, Standards and Certification will proceed as follows:~~

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, Standards and Certification will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, Standards and Certification will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, Standards and Certification will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board may consider mitigating and aggravating circumstances, including, but not limited to, the following:

(A) When the misconduct occurred in relation to the public safety professional's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional was a minor at the time and tried as an adult;

(iv) Whether the public safety professional served time in prison or jail and the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional met all obligations;

(vi) Whether the public safety professional has ever been on parole or probation. If so, the date the parole or probation period expired or will expire; and

(vii) Whether the public safety professional has more than one conviction and over what period of time;

(C) Whether the public safety professional engaged in the same misconduct more than once and over what period of time;

(D) Whether the actions of the public safety professional reflect adversely on the profession or would cause a reasonable person to have substantial doubts about the public

~~safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;~~

- ~~(E) Whether the misconduct involved domestic violence;~~
- ~~(F) Whether the public safety professional self reported the misconduct;~~
- ~~(G) Whether the conduct adversely reflects on the fitness of the public safety professional to perform as a public safety professional;~~
- ~~(H) Whether the conduct renders the public safety professional otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional; and~~
- ~~(I) What the public safety professional's physical or emotional condition was at the time of the conduct.~~

~~(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional.~~

~~(f) Contested Case Notice:~~

~~(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.~~

~~(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.~~

~~(g) Response Time:~~

~~(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.~~

~~(B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for hearing with the Department.~~

~~(h) Default Orders:~~

~~(A) If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672.~~

~~(B) If a timely request for a hearing is not received in cases heard by a policy committee, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.~~

~~(i) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.~~

~~(j) Proposed and Final Orders:~~

~~(A) In cases in which a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.~~

~~(B) Department proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.~~

~~(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification, under the terms and conditions outlined in the stipulated order.~~

~~(10) Appeal Procedure. A public safety professional, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.~~

~~(11) Reapplication Process.~~

~~(a) Any public safety professional whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.~~

~~(b) Any public safety professional whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:~~

~~(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;~~

~~(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an~~

~~individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.~~

~~(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.~~

~~(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;~~

~~(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's request for eligibility to apply for certification.~~

~~(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.~~

~~(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.~~

~~(C) The public safety professional is employed or utilized by a public safety agency or the Department; and~~

~~(D) All requirements for certification have been met.~~

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## **DRAFT Rule Language Continued:**

The following revised language for OARs 259-008-0005, 259-008-0010, 259-008-0011 and 259-008-0080 contains recommended additions (**bold and underlined**) and deletions (strikethrough text).

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### **259-008-0005**

#### **Definitions**

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~~(36) “Suspension” means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.~~

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### **259-008-0010**

#### **Minimum Standards for Employment as a Law Enforcement Officer or Utilization as a Reserve Officer**

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(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (a) Mandatory **grounds for denying or revoking certification** disqualifying misconduct as described in OAR 259-008-0070~~(2 3)~~; or
- (b) Discretionary **grounds for denying, suspending or revoking certification** disqualifying misconduct as described in OAR 259-008-0070(4).

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### **259-008-0011**

#### **Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher**

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(4) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (a) Mandatory grounds for denying or revoking certification disqualifying misconduct as described in OAR 259-008-0070(2 3); or
- (b) Discretionary grounds for denying, suspending or revoking certification disqualifying misconduct as described in OAR 259-008-0070(4).

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## **259-008-0080**

### **Certification of Instructors**

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(2) Minimum Standards for Instructor Certification:

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(d) Moral Fitness (Professional Fitness). All instructors and applicants must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

- (A) Mandatory grounds for denying or revoking certification disqualifying misconduct as described in OAR 259-008-0070(2 3); or
- (B) Discretionary grounds for denying, suspending or revoking certification disqualifying misconduct as described in OAR 259-008-0070(4).

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**ACTION ITEM 1:** Determine whether to recommend filing the proposed language for OARs 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0070 and 259-008-0080 with the Secretary of State as a proposed rule.

**ACTION ITEM 2:** Determine whether to recommend filing the proposed language for OARs 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0070 and 259-008-0080 with the Secretary of State as a permanent rule if no comments are received.

**ACTION ITEM 3:** Determine if there is any significant fiscal impact on small businesses.